

JERRY TECKLIN
LEONARD BRACKETT

IBLA 75-226

Decided May 30, 1975

Appeal from decision of the Folsom District Office, California, Bureau of Land Management, denying requested route and offering a special land-use permit for an alternate access route across national resource lands to private land (S-FOL-079).

Affirmed as modified.

1. Administrative Authority: Generally -- Applications and Entries:
Generally -- Public Lands: Special Use Permits -- Special Use Permits

The issuance of a special land-use permit is discretionary, and the Bureau of Land Management may reject a special land-use permit application when the proposed use would adversely affect the public interest, and may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands.

APPEARANCES: Jerry Tecklin, pro se, and for appellant Leonard Brackett.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Jerry Tecklin and Leonard Brackett have appealed from a letter decision of the Folsom District Office, California, Bureau of Land Management (BLM), dated October 1, 1974, rejecting their requested route and offering a special land-use permit for an alternate access route across national resource land in sec. 3, T. 17 N., R. 9 E., M.D.M., California.

Appellants filed Special Land-Use Application and Permit No. S-FOL-079 requesting access across national resource lands in order to enter their private land near Nevada City, California. Appellants requested an access, designated "Route A," which includes use of an existing road, the Shields Camp Road, presently being used in conjunction with current and future BLM development and management plans for the national resource lands. Following a land report and an environmental analysis report regarding the applied for access route, the District Office denied the requested route and offered appellants an alternate route, designated "Route D." This route does not provide access over the Shields Camp Road. In its decision, the District Office submitted the following reasons for its determination:

- 1) Controlled access is planned for the Shields Camp Road and is essential to proper management of the national resource land consistent with the management policies outlined by 43 CFR 1725.3.
- 2) The route offered will satisfactorily provide access to the private land and is the least damaging to national resource land.

On appeal, appellants urge that BLM employees led them to believe that they would get an access route, presumably the one applied for. They also argue that the BLM land and environmental reports are deficient because all pertinent factors were not considered.

By letter dated March 21, 1975, the Board informed the District Manager, BLM, that appellants had submitted a statement of reasons on appeal in which they alleged certain facts which had not been specifically examined in the BLM land and environmental reports. The Board requested comments on the allegations and we directed the BLM to serve appellants with a copy of all material sent to the Board. 1/ Appellants were given 15 days from receipt thereof to file a reply with the Board.

On April 21, 1975, the Board received a reply from the BLM. Upon review of its earlier reports, the BLM concluded that all the factors mentioned by appellants had been considered by the BLM. One error, however, was discovered:

1/ A copy of the Board's letter was sent to appellants. See 43 CFR 4.27(b).

We have re-examined the various routes and find that Route C, the one currently being used by the appellants, has a grade of 12% rather than 22% as shown by our report. [W]e would consider a temporary permit on Route C.

Route C allows access over the Shields Camp Road.

On May 7, 1975, the Board received appellants' counter-reply to the BLM's new offer. Appellants were pleased by the compromise but still insisted that Route A be granted instead. Appellants stated that, compared to Route C, Route A offered them better, low-maintenance access with approximately the same amount of disturbance to national resource lands.

[1] The issuance of a special land-use permit is discretionary, and the BLM may reject an application for such permit if the Bureau's studies of the area indicate that the route applied for is inconsistent with the Bureau's objectives and programs for use of the land. 43 CFR 2924.3(a); Walt's Racing Association, 18 IBLA 359, 364 (1975); Wyoming Highway Department, 14 IBLA 258, 260 (1974); Desert Outdoor Advertising, Inc., 2 IBLA 344, 349 (1971); Allen M. Boyden, 2 IBLA 128, 131 (1971). In view of the fact that we have held that the Bureau may reject a special land-use permit application when the proposed use would adversely affect the public interest, it is no less reasonable to hold that the Bureau may offer, in the alternative, a permit providing for use consonant with proper management of national resource lands. Cf. Grindstone Butte Project, 18 IBLA 16, 19 (1974). Furthermore, we emphasize that a special landuse permit is revocable in the discretion of the authorized officer at any time, upon notice, if in his judgment the lands should be devoted to another use, or the conditions of the permit have been breached. 43 CFR 2920.3(a).

In the present case, we have examined the land and environmental reports and the BLM's supplemental comments, and find the analyses to be comprehensive and the conclusions reasonable. Accordingly, we reject appellants' argument that the reports are deficient. Appellants' permit application was, in fact, approved subject to use of an alternate route where access across national resource lands would be consistent with BLM objectives and programs for public use of the land. See Walt's Racing Association, supra at 365 n.5. Accordingly, we conclude that the actions taken by the BLM were proper and appellants may now choose to accept a special land-use permit for either Route C or Route D.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by the newly proposed access route.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

